

**Return Date: September 7, 2000**  
**Return Time: 10:00 a.m.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	: Case Nos. 00-B-41065 (SMB)
RANDALL'S ISLAND FAMILY GOLF	: through 00-B-41196 (SMB)
CENTERS, INC., et al.,	:
	: Chapter 11
Debtors.	:
	:
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**NOTICE OF MOTION TO VACATE THE AUTOMATIC STAY**

**PLEASE TAKE NOTICE**, that upon the annexed declaration of DAVID L. TILLEM, a member of the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for EQR-DEER RUN VISTAS, INC. ("EQR"), dated August 23, 2000, EQR will move before the Honorable Stuart M. Bernstein, Chief United States Bankruptcy Judge, in his courtroom at the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York on the 7th day of September, 2000 at 9:30 in the forenoon, or as soon thereafter as counsel may be heard, for an order under section 362(d) of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-1 of the Local Bankruptcy Rules for the Southern District of New York :

(1) terminating the automatic stay arising out of the filing of the bankruptcy petition of Debtor GREENVILLE FAMILY GOLF CENTERS, INC. (the "Debtor") so as to permit EQR to proceed with the prosecution of an action against the Debtor, entitled EQR-Deer Run Vistas, Inc. v. Clarence Ray McNeil, et al., filed in the Court of Common Pleas, State of South Carolina,

County of Greenville, as Case No. 99-CP-23-1391, while limiting any recovery solely to any and all existing policies of insurance or insurance monies or proceeds covering the Debtor; and

(2) granting such other and further relief as the Court may deem just and proper.

**PLEASE TAKE FURTHER NOTICE**, that answering papers, if any, must be in writing, must state with particularity the grounds for objection, and must be served upon the undersigned and filed with the clerk of the Bankruptcy Court no later than three (3) days prior to the return date of this motion.

Dated: White Plains, New York  
August 23, 2000

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**  
Attorneys for EQR-DEER RUN VISTAS, INC.

By: /s/ David Tillem  
DAVID L. TILLEM (DT-7413)  
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File No. 03592.00074

TO: Attached Service List

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**Return Date: September 7, 2000**  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	: Case Nos. 00-B-41065 (SMB)
RANDALL'S ISLAND FAMILY GOLF	: through 00-B-41196 (SMB)
CENTERS, INC., et al.,	:
	: Chapter 11
Debtors.	:
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**DECLARATION IN SUPPORT MOTION**  
**TO VACATE THE AUTOMATIC STAY**

**TO: THE HONORABLE STUART M. BERNSTEIN**  
**CHIEF UNITED STATES BANKRUPTCY JUDGE**

DAVID L. TILLEM, an attorney duly admitted to practice law before this Court, declares the following statements under penalty of perjury:

1. I am a member of the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for the movant, EQR-DEER RUN VISTAS, INC. ("EQR"), and I am familiar with the facts in this matter based upon the legal filed maintained by this office.

2. This declaration is submitted in support of the motion of EQR for an Order terminating the automatic stay under 11 U.S.C. § 362(d).

3. This bankruptcy case was commenced by the filing of voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") by several related debtors, among them being GREENVILLE FAMILY GOLF CENTERS, INC. (the "Debtor"), on May 4, 2000 (the "Filing Date").

4. By Order of Joint Administration, dated May 4, 2000, the Chapter 11 bankruptcy case of the Debtor, as well as the cases of the other related entities filing on the filing Date, were consolidated for procedural purposes only and are to be jointly administered.

5. Before the Filing Date, and pursuant to a Summons and Complaint dated March 31, 1999, EQR commenced an action (the “Action”) in which EQR alleged that the Debtor, *inter alia*, was responsible for certain sedimentation from the Cross Winds Golf Club, which the Debtor leased, and thereby damaged EQR’s property. The Action is pending in the Court of Common Pleas, State of South Carolina, County of Greenville, as Case No. 99-CP-23-1391.

6. Before the Filing Date, EQR had been negotiating with the Debtor to enter into settlement of the Action. As a part of such negotiations, EQR confirmed that the Debtor’s insurers, Crum & Forster Insurance and St. Paul Insurance (the “Insurers”), would cover any liability of the Debtor arising from the Action. By virtue of the relief accorded to the Debtor under section 362(a) of the Bankruptcy Code, however, the Action was stayed.

7. By Order dated July 19, 2000, the Action was stricken from the trial calendar as to the Debtor because of the Debtor’s bankruptcy. Nevertheless, the Debtor has indicated a willingness to enter into an agreement to settle the claim that was the subject of the Action.

8. Pursuant to section 362(d) of the Bankruptcy Code, the Court “shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—(1) for cause....”

9. EQR seeks termination of the automatic stay to proceed with the Action while limiting any recovery that EQR may be entitled to as a result of settlement, judgment or decision in its favor solely to any and all existing policies of insurance or insurance monies or proceeds

covering the Debtor. EQR therefore agrees that it shall not seek recovery from either the Debtor or the Debtor's Chapter 11 estate in bankruptcy (the "Estate").

10. It has been established by precedent that the Bankruptcy Courts have generally permitted termination of the automatic stay when a movant seeking permission to commence or recommence an action against a debtor agrees to limit recovery solely to the debtor's insurance coverage. *See In re Royal Ins. Co. of American v. McCrory Corp.*, 1996 WL 204482 (S.D.N.Y. 1996). In such cases, lifting the automatic stay would not prejudice nor would it have any economic impact on the debtor or its estate.

11. The rationale for allowing a creditor to collect a debtor's insurance proceeds is simple: "bankruptcy law is meant to provide a 'fresh start' to a debtor but not a windfall to third parties such as insurance companies." *In re Royal Ins. Co. of America v. McCrory Corp.*, 1996 WL 204482 at \*2. The insurer should not escape coverage merely because the insured may escape its obligations by having filed for bankruptcy protection. *Id.*

12. The present application is a straightforward request to proceed with the Action and limit recovery to the Debtor's insurance coverage. It would have no economic impact on the Debtor or on other creditors of the Debtor.

13. Inasmuch as the relevant points and authorities relied upon in support of the application are set forth above, EQR respectfully requests a waiver of the requirement under Local Rule 9013-1 to file a separate memorandum of law.

14. No application has been made to this or any other Court for the relief herein requested.

**WHEREFORE**, EQR-DEER RUN VISTAS, INC. respectfully requests that this Court grant the instant motion and issue an Order (i) terminating the automatic stay pursuant to 11

U.S.C. § 362(d) so as to permit EQR to proceed with the prosecution of its action against the Debtor, entitled EQR-Deer Run Vistas, Inc. v. Clarence Ray McNeil, et al., filed in the Court of Common Pleas, State of South Carolina, County of Greenville, as Case No. 99-CP-23-1391, (ii) limiting any recovery that EQR may be entitled to as a result of settlement, judgment or decision in its favor in connection with the Action solely to any and all existing policies of insurance or insurance monies or proceeds covering the Debtor, and (iii) granting such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York  
August 23, 2000

**WILSON, ELSE, MOSKOWITZ,  
EDELMAN & DICKER LLP**  
Attorneys for EQR-DEER RUN VISTAS, INC.

By: /s/ David L. Tillem  
DAVID L. TILLEM (DT-7413)  
925 Westchester Avenue  
White Plains, NY 10604  
(914) 946-7200  
File No. 03592.00074



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
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RANDALL'S ISLAND FAMILY GOLF	:
CENTERS, INC., et al.,	:
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Debtors.	:
	:
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Case Nos. 00-B-41065 (SMB)  
through 00-B-41196 (SMB)  
Chapter 11

**ORDER VACATING THE AUTOMATIC STAY**

UPON the Motion of EQR-DEER RUN VISTAS, INC. (EQR”), by its attorneys WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, pursuant to 11 U.S.C. § 362(d) to terminate the automatic stay arising out of the filing of the bankruptcy petition of Debtor GREENVILLE FAMILY GOLF CENTERS, INC. (the “Debtor”) so as to permit EQR to proceed with the prosecution of an action against the Debtor, entitled EQR-Deer Run Vistas, Inc. v. Clarence Ray McNeil, et al., filed in the Court of Common Pleas, State of South Carolina, County of Greenville, as Case No. 99-CP-23-1391, while limiting any recovery solely to any and all existing policies of insurance or insurance monies or proceeds covering the Debtor; the Notice of Motion, dated August 23, 2000; the Declaration of David L. Tillem, dated August 23, 2000; and said Motion have regularly come on to be heard before the Honorable Stuart M. Bernstein, Chief United States Bankruptcy Judge, on September 7, 2000, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York; it is hereby

**ORDERED**, that the Motion of EQR is hereby GRANTED; and it is further

**ORDERED**, that the automatic stay is hereby vacated pursuant to 11 U.S.C. § 362(d) so as to permit EQR to proceed with the prosecution of an action against the Debtor, entitled EQR-

Deer Run Vistas, Inc. v. Clarence Ray McNeil, et al., filed in the Court of Common Pleas, State of South Carolina, County of Greenville, as Case No. 99-CP-23-1391 (the “Action”); and it is further

**ORDERED**, that any recovery that EQR may be entitled to as a result of settlement, judgment or decision in its favor in connection with the Action shall be limited solely to any and all policies of insurance or insurance monies or proceeds covering the Debtor.

Dated: New York, New York  
September \_\_\_\_, 2000

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United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
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CENTERS, INC., et al.,	:
	:
	: Chapter 11
Debtors.	:
	:
-----	X

**CERTIFICATE OF SERVICE**

Darren F. Farrington declares:

I am a resident of Harrison, New York, I am over the age of eighteen, and I am not a party in interest in the above-captioned bankruptcy case.

On August 25, 2000, I served the attached NOTICE OF MOTION TO VACATE THE AUTOMATIC STAY, DECLARATION IN SUPPORT OF MOTION TO VACATE THE AUTOMATIC STAY, and ORDER VACATING THE AUTOMATIC STAY by causing a true copy thereof to be enclosed in post-paid wrapper to be deposited in an official depository under the care of the U.S. Postal Service within the State of New York, addressed to each of the following persons at the last known address set forth after each name:

See attached Service List.

/s/ Darren F. Farrington

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